

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ANTHONY RAUL BARRON,

Petitioner,

No. C 11-2797 PJH (PR)

vs.

ORDER TO SHOW CAUSE

MIKE STAINER, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the California Correctional Institution in Tehachapi, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

Petitioner was convicted in Santa Clara County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d).

BACKGROUND

A jury convicted petitioner of assault with a deadly weapon and found that he committed that offense for the benefit of a criminal street gang. See Cal. Penal Code §§ 245(a)(1), 186.22(b)(1)(B). He admitted a prior strike felony. See *id.* at §§ 667(a), 667(b)-(i), 1170.12. He was sentenced to prison for a term of sixteen years.

Petitioner appealed. The California Court of Appeal affirmed and the Supreme Court of California denied review.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody

in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

B. Legal Claims

As grounds for federal habeas relief, petitioner asserts that: (1) his due process and Confrontation Clause rights were violated by the trial court's exclusion of evidence that an officer used excessive force against him; (2) the prosecutor committed misconduct in specified ways; and (3) the cumulative effect of the above errors prejudiced him. These claims are sufficient to require a response.

CONCLUSION

1. The clerk shall serve by regular mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

2. Respondent shall file with the court and serve on petitioner, within sixty days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant

1 to a determination of the issues presented by the petition.

2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
3 the court and serving it on respondent within thirty days of his receipt of the answer.

4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
5 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
6 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court
7 and serve on respondent an opposition or statement of non-opposition within thirty days of
8 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply
9 within fifteen days of receipt of any opposition.

10 4. Petitioner is reminded that all communications with the court must be served on
11 respondent by mailing a true copy of the document to respondent's counsel. Petitioner
12 must keep the court informed of any change of address and must comply with the court's
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*
15 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

16 **IT IS SO ORDERED.**

17 Dated: August 30, 2011.



PHYLLIS J. HAMILTON
United States District Judge

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